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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Report by the independent expert, Mr. Fanuel Jarirentundu Kozonguizi, on the conditions in Somalia, prepared in accordance with paragraph 6 of Commission on Human Rights resolution 1993/86

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Introduction

1. The mandate of the independent expert was established by the Commission on Human Rights in resolution 1993/86 adopted on 10 March 1993 and was subsequently approved by the Economic and Social Council in its decision 1993/282 of 28 July 1993.

2. In that resolution, the Commission requested the Secretary-General to appoint for a period of one year a person having wide experience in the field of human rights as an independent expert to assist the Special Representative of the Secretary-General for Somalia through development of a long-term programme of advisory services for re-establishing human rights and the rule of law, including a democratic constitution, as well as the eventual holding of periodic and genuine election by universal suffrage and secret ballot.

3. The Commission also requested the Secretary-General to give priority to implementing the programme recommended by the independent expert, as conditions in Somalia permitted, including through the programme of advisory services of the Centre for Human Rights, in close cooperation with the Special Representative of the Secretary-General, the United Nations peace-keeping operation in Somalia and other United Nations activities, such as the Electoral Assistance Unit, as well as humanitarian and non-governmental organizations.

4. In addition, the Commission urged the Secretary-General to consider recommending the establishment of a unit within the United Nations operation in Somalia to assist in the promotion and protection of human rights and in encouraging respect for humanitarian law, as well as in the implementation of the recommendations of the independent expert.

5. The present report is submitted by the independent expert in accordance with paragraph 6 of resolution 1993/86.

I. ASSESSMENT OF THE CURRENT SITUATION

6. After the widely reported atrocities committed against the Somali people by the regime of the ousted president, General Siad Barre, for over two decades, violations of human rights have increased even more since January 1991. The absence of an accountable government and the lack of infrastructure in the country, combined with a situation of almost total anarchy, make the capture and bringing to justice of perpetrators of violations of human rights in Somalia a very difficult task.

7. The independent expert would like to refer in this connection to the fact that the United Nations had offered a reward of 25,000 dollars for the capture of General Aidid following the criminal attack committed against UNOSOM II forces, as a result of which 25 Pakistani soldiers were killed, 10 listed as missing and 57 wounded (54 Pakistani, 3 United States). 1/

8. Moreover, when United States Army Rangers captured the chief aide to General Aidid, Mr. Osman Atto, on 21 September 1993, it was reported that General Aidid's supporters threatened attacks on UNOSOM headquarters and on foreigners, if Mr. Atto was not released soon. 2/

9. It was subsequently reported that, following a raid on forces of General Aidid on 3 October 1993 in which 18 United States soldiers were killed, 3/ the United States Government had withdrawn the Ranger unit, as part of a shift in emphasis from security to rebuilding the political process in Somalia.

10. Although General Aidid declared a cease-fire on 9 October 1993, he was subsequently quoted as having stated in an interview that the presence of UNOSOM troops was undesirable and had become an obstacle to any political solution in Somalia. 4/ This statement was made in spite of ongoing efforts by senior United Nations officials, including a visit by the Secretary-General to Somalia on 22 October 1993, aimed at achieving implementation of the Addis Ababa Agreement. Later on, it was reported that the cease-fire had broken down and that clan feuding had started up again in Mogadishu. 5/

11. In this connection, the Security Council adopted resolution 885 (1993), on 16 November 1993, in which it authorized the establishment of a Commission of Inquiry, in further implementation of resolutions 814 (1993) and 837 (1993), to investigate armed attacks on UNOSOM II personnel. It also requested that the Secretary-General, under his authority in resolutions 814 (1993) and 837 (1993), pending completion of the report of the Commission, suspend arrest actions against those individuals who might be implicated but were not currently detained pursuant to resolution 837 (1993), and make appropriate provision to deal with the situation of those already detained under the provisions of resolution 837 (1993).

12. Subsequently, on 18 November 1993, the Security Council adopted resolution 886 (1993) in which it affirmed that the Addis Ababa Agreement of 27 March 1993 constituted a sound basis for resolution of the problems in Somalia. In paragraph 4 of that resolution, the Security Council requested the Secretary-General to report on the progress made in achieving national reconciliation by the Somali people and that made in the attainment of political, security and humanitarian goals, and to provide an updated plan setting out UNOSOM II's future concerted strategy with regard to its humanitarian, political and security activities. The Council also decided to renew the mandate of UNOSOM II until 31 May 1994 and to undertake a fundamental review of that mandate in the light of the report of the Secretary-General and his updated plan. In this connection, it was reported that the United States House of Representatives had approved a total withdrawal of American troops by 31 March 1994. 6/

13. In a press release dated 7 October 1993, the International Committee of the Red Cross expressed its deep concern at the casualties that had resulted from the fighting in Mogadishu in early October, and urged all forces involved in the conflict to comply with international humanitarian law and, in particular, to spare the civilian population. 7/

14. In this connection, the expert received allegations of human rights violations committed by the United Nations forces in Somalia. These allegations included conduct in violation of the principles of humanitarian law contained in the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, now considered to form part of customary international law.

15. The independent expert concurs with the position adopted in the Security Council when it affirmed that

> "All officials of the United Nations and all experts on mission for the United Nations in Somalia enjoy the privileges and immunities provided for in the Convention on the Principles and Immunities of the United Nations of 1946 and in any other relevant instrument and that all parties, movements and factions in Somalia are required to allow them full freedom of movement and all necessary facilities". 8/

Therefore, after careful reflection, he has decided, in fulfilment of his mandate, to undertake a field mission in order to assist the Special Representative of the Secretary-General and to report to the Commission on the conditions in Somalia. The results of his mission will be submitted as an addendum to the present report.

II. MANDATE OF THE INDEPENDENT EXPERT

16. In accordance with its terms of reference, the mandate entrusted to the expert by the Commission on Human Rights should be implemented in cooperation with the Special Representative of the Secretary-General and therefore activities proposed or already undertaken within the framework of UNOSOM II should be considered a point of departure for developing a long-term programme of advisory services.

17. In this context, it is important to recall the political intention of 15 Somali leaders contained in the Addis Ababa Agreement of the First Session of the Conference on National Reconciliation in Somalia, of 27 March 1993. 9/ A follow-up "all Somalia peace conference" was held in Mogadishu on 30 September and 1 October 1993, which was attended by 12 of the 15 Somali political movements whose representatives had signed the Addis Ababa Agreement.

18. In the Agreement (sect. I, Disarmament and Security), the Somali political leaders committed themselves "to complete, and simultaneous disarmament throughout the entire country in accordance with the disarmament concept and time-frame set by the Cease-Fire Agreement of January 1993". 10/

19. The expert therefore deplores the fact that despite several calls from the Security Council 11/ for a comprehensive and effective programme for disarming of the Somali parties, including movements and factions, the Somali leaders continue to violate the commitments they made on 27 March and 1 October 1993, notwithstanding their request to UNOSOM to apply strong and effective sanctions against those responsible for any violation of the Cease-Fire Agreement. Furthermore, the Somali leaders have reiterated that to find a genuine and lasting solution to the Somalia crisis, the cooperation of UNOSOM II with the political organizations and community leaders is essential for the fulfilment of the Addis Ababa Peace Agreement.

20. The expert, furthermore, wholeheartedly concurs that there is a need, as expressed in the Addis Ababa Agreement, to establish an impartial national and regional police force in all regions of the country. However, it is clear

that a critical element in creating the security conditions necessary for the establishment of such a force is the real disarmament of the entire country.

21. With regard to the restoration of property, the parties to the Agreement affirmed that all private or public properties that had been illegally confiscated, robbed, stolen, seized, embezzled or taken by other fraudulent means must be returned to their rightful owners. The expert welcomes in this connection the proposal that UNOSOM establish a property claims investigation team to deal with such crimes, and that all property crimes not under the jurisdiction of the team be directed to the Somali police for investigation. 12/

22. The expert considers the proposed establishment of transitional mechanisms, which should prepare the country for a stable and democratic future, an essential part of the Agreement. The expert is convinced that his mandate to develop a long-term programme of advisory services could be very useful once all the four basic transitional organs of authority are effectively in place. He is aware that quick action is needed while UNOSOM is still in place during the two years from the date of the signature of the Agreement, that is to say until the end of March 1995.

23. The following organs are established under the Agreement:

(a) The Transitional Council will be the repository of Somalian sovereignty. It will have the authority to appoint various committees, including a Transitional charter drafting committee, which would draft a democratic constitution guided by traditional Somalian ethics and by the basic principles of human rights. In addition, the Council will establish an independent judiciary, as requested by the Security Council, with the assistance of UNOSOM. By 31 March 1995, the Transitional National Council will have determined what type of judicial system and laws are required for the country. It is planned that the UNOSOM II mission will end on that date. 13/

(b) Central administrative departments will function under the supervision of the Transitional Council. Their primary function will be to re-establish and operate the departments of civil administration and of social, economic and humanitarian affairs, and thus pave the way for the re-establishment and operation of a formal government.

(c) Regional councils will be established in all 18 existing regions of Somalia. Thus far, two regional councils have been established. The councils will be entrusted primarily with the task of implementing humanitarian, social and economic programmes in coordination with the Transitional National Council and will also assist in conducting an internationally-supervised census. The regional councils will liaise with UNOSOM II, United Nations specialized agencies, non-governmental organizations and other relevant organizations directly and through the Central Administrative Departments and the Transitional National Council. The regional councils will also be responsible for law and order at the regional level. A regional police force and a regional judiciary will be the enforcement mechanism at the regional level.

(d) District councils will be established. Thus far, 38 out of a proposed 61 district councils have been established. District council members will be elected or selected on the basis of consensus in accordance with Somalian traditions. The district councils will be responsible for managing public safety, health, education and reconstruction.

24. Regarding the investigation and prosecution of serious violations of international humanitarian law required under Security Council resolution 814 (1993) of 26 March 1993, the expert will collaborate with UNOSOM and its recently established Office of Human Rights. The establishment of a local Somali human rights committee could facilitate, when conditions permit, on-the-spot investigation of violations of human rights.

25. The expert welcomes the proposal that UNOSOM establish a team of international specialists to investigate, in cooperation with the Somali police, human rights violations committed against the Somali people, as well as against international assistance workers. Such violations include mass murders of Somali citizens, and the murder or attempted murder of, and threats of bodily harm against, international assistance workers and UNOSOM employees.

III. CONCLUSIONS

26. The expert recognizes that in the present circumstances it is premature to propose any specific activity to be undertaken under the programme of advisory services. If the situation does not improve in the near future, he would consider recommending to the Commission on Human Rights that his mandate be changed or that the situation be referred to other United Nations bodies.

27. Implementation of the current mandate can only take place once all parties concerned decide to commit themselves to the Addis Ababa Agreement of 27 March 1993. The complete disarmament of all sides is a sine qua non for security and stability in the country. An independent group of human rights monitors should be established to receive complaints and collect and investigate reports of violations of human rights and humanitarian law, and to transmit them to the UNOSOM office or, where appropriate, to the Centre for Human Rights.

28. In conformity with the request of the Security Council, perpetrators of serious violations of human rights should be apprehended and brought to justice. International lawyers could conduct these trials, if Somali judges decline to hear cases as a result of threats or intimidation. Suspects would be given a trial in accordance with internationally accepted standards, but there should be no impunity for these kinds of violations.

Notes

1/ Report of the Secretary-General on the implementation of Security Council resolution 837 (1993) (S/26022), para. 9, p. 2.

2/ International Herald Tribune, 22 September 1993, p. 2.

3/ Ibid., 20 October 1993, p. 1.

4/ Le Figaro, 29 October 1993, p. 4.

5/ International Herald Tribune, 26 October 1993, p. 2.

6/ International Herald Tribune, 11 November 1993, p. 3.

7/ International Committee of the Red Cross, Press release No. 1759, 7 October 1993.

8/ Security Council resolution 767 (1992) of 27 July 1992, para. 15, and 885 (1993) of 16 November 1993, para. 4.

9/ Transmitted to the United Nations Secretariat by the Transitional Government of Ethiopia on 30 March 1993.

10/ S/25168, annex III.

11/ Security Council resolutions 814 (1993) of 26 March 1993, para. 8; 837 (1993) of 6 June 1993, para. 3 and 865 (1993) of 22 September 1993, eleventh preambular paragraph.

12/ Further report of the Secretary-General submitted in pursuance of para. 18 of resolution 814 (1993) (S/26317), annex I, paras. 60, 61.

13/ Security Council resolution 865 of 22 September 1993, para. 4.